To date, local attempts to regulate aircraft noise have been limited. Those which have rested on an asserted exercise of the police power have been uniformly held invalid, as an undue and unreasonable burden on interstate commerce or as invading an area uniquely committed to Federal care.[10]

However, the principal problem in attempted local regulation has not been by way of noise ordinances adopted under the police power, but purported "lease conditions" imposed by the airport operator as landlord. For example, the Port of New York Authority's well-known "112-PNdb" rule is enforced against carriers operating at the New York airports, under the alleged right of the Port as operator of the airport to control the conditions of its use.

The costs of complying with the New York noise-limit have been estimated by one airline alone at Kennedy International Airport at over $4-million a year. Another carrier estimates that its economic penalty in complying with the regulation as equal to 5% of the annual gross operating revenue of each of its affected aircraft operated at Kennedy International.

Until now, the New York airport regulation has been upheld by the courts as not in conflict with any existing Federal certification or regulation.[11] This appears to be as much the result of omission by FAA to exercise Federal authority as anything else. On the other hand, while it is by no means certain that Federal "noise certification" authority in and of itself would preempt the alleged power of airport landlords to impose such "lease conditions" (or even of municipalities to impose different noise limits than the Federal certification limit), it is apparent that if *mandatory* noise certification were to be added to existing noise regulatory authority o fthe FAA, it would at least move much closer toward complete preemption of the regulation of aircraft noise.

3. Retroactivity of certification authority

Despite FAA's testimony that noise certification under the bill would be only *prospective*, and would not be applicable to aircraft already certificated, there is nothing in H.R. 3400 imposing any such limitation. Thus, by inference at least, the Administrator would have the power to amend, modify, suspend or revoke an aircraft airworthiness certificate for purposes of adding a noise (or sonic boom) standard to such certificate.

Perhaps this result is not intended, and as the FAA's witnesses stated in the 1966 hearings, certification for noise is contemplated as being prospective only. If so, there should be no objection to clarification of this point by an appropriate provision in the bill. We have accordingly provided, in subsection (c) of the substitute bill, that the Administrator's power to amend, modify, suspend or revoke an outstanding certificate for noise purposes shall not extend to aircraft *airworthiness* certificates already in existence.

It is appreciated by the airlines that the FAA might need authority to extend its noise standards to undelivered aircraft which have been type-certificated, but have not yet received airworthiness certificates. Indeed, we concur in the concept that not only *future* aircraft designs, but the later production runs of existing aircraft types, might be required to incorporate appropriate and necessary new noise standards. But the economic implications of recalling existing airworthiness certificates to superimpose a new noise standard, transcend certification procedures and raise basic issues of both *economic regulatory jurisdiction* and of balancing the various segments of the public interest involved.

In this respect, H.R. 3400 would empower far more than mere noise alleviation, and should be amended, as proposed by the substitute, so as to limit its applicability to aircraft *type* certificates.

4. Procedural safeguards for amendment, suspension and revocation

Under the existing safety-certification provisions of Title VI, a certificate cannot be amended, modified, suspended or revoked without giving the certificate

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[10] *All America Airways* v. *Village of Cedarhurst*, E.D.N.Y. (1952), 106 F. Supp. 521, aff'd 2d Cir. 1953, 201 F. 2d 273; after final judgment aff'd sub. nom. *Allegheny Airlines* v. *Village of Cedarhurst*, 2d Cir. 1956, 238 F. 2d 812. Cf. *City of Newark* v. *Eastern Air Lines*, D.N.J. 1958, 159 F. Supp. 750 and the recently decided case voiding the Hempstead, N.Y., "antinoise ordinance," *American Airlines, et al.* v. *Town of Hempstead, et al.*, E.D.N.Y. (June 30, 1967), 272 F. Supp. 226.

[11] *Port of New York Authority* v. *Eastern Air Lines, et al.*, E.D.N.Y. (1966), 259 F. Supp. 745. Cf. *American Airlines, et al.* v. *Town of Hempstead, supra*, note 5, where the Court said of the Port's rules (at pp. 233–234):

". . . its rules are expressly subordinate to the FAA rules and do not profess to authorize or direct anything not authorized under the FAA rules, regulations and Tower bulletin."